

00-1038 M.M.K. v. Window Welder Issued: 1/31/02

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Window Welder and its workers' compensation insurance carrier, Commercial Casualty Insurance (referred to jointly as "Window Welder" hereafter), ask the Utah Labor Commission to review the Administrative Law Judge's award of benefits to M. M. K. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

### **BACKGROUND AND ISSUES PRESENTED**

In an Application for Hearing filed on October 31, 2000, Mr. K. claimed workers' compensation benefits for an alleged work accident at Window Welder on June 20, 2000. After an evidentiary hearing, the ALJ concluded that the accident actually occurred on July 19, 2000, and that Mr. K. was entitled to benefits for injury caused by the accident.

In its timely motion for Commission review of the ALJ's decision, Window Welder contends the evidence in this matter does not establish that Mr. K. was involved in a work-related accident on June 20, 2000, and that it was improper for the ALJ to find an accident on a date other than the date alleged in Mr. K.'s Application.

### **FINDINGS OF FACT**

The Commission adopts the ALJ's findings of fact.

### **DISCUSSION AND CONCLUSION OF LAW**

As noted above, Window Welder contends the evidence in this matter fails to establish that Mr. K. was involved in a work-related accident on June 20, 2000. The Commission agrees that, in light of Mr. K.'s detailed description of the nature and circumstances of the task he was performing at the time of his accident, the accident could not have occurred on June 20, 2000. However, Window Welder's business records and the testimony of other Window Welder employees convinces the Commission that the accident in question did occur on July 19, 2000. Mr. K.'s belief and testimony that the accident occurred on the earlier date appears to be a simple mistake.

Having concluded that Mr. K. erroneously reported his accident date, the Commission finds no error in the ALJ's use of the correct accident date in adjudicating Mr. K.'s claim. Although Window Welder contends it was unfairly surprised by the changed accident date, it did not request additional time to investigate the matter. Furthermore, business records which established the correct accident date were already in Window Welder's possession.

The Commission does not view Hilton Hotel v. Industrial Commission, 897 P.2d 352 (Utah App. 1995) as controlling. Here, the question of the correct date of accident was raised by the parties themselves and discussed in some detail at the hearing. The ALJ has not *sua sponte* changed the underlying issues of Mr. K.'s claim or decided questions not presented by the parties.

In summary, the Commission concludes the ALJ properly and fairly adjudicated Mr. K.'s claim for workers' compensation benefits consistent with the preponderance of the evidence.

**ORDER**

The Commission affirms the ALJ's decision and denies Window Welder's motion for review. It is so ordered.

Dated this 31<sup>st</sup> day of January, 2002.

R. Lee Ellertson, Commissioner